ceeds properly. The right to redeem, together with a claim against this defendant for slander of title, seems to be all that plaintiff needs; and the law does not create unnecessary remedies. Much of the reasoning which allows the option here would apply to the case of a disseisin, but a disseisee has no option. *Brigham* v. *Winchester*, 6 Met. 460, (not noticed by the court in this case). Directly opposed to *Rogers* v. *Barnes* is *Winslow* v. *Clark*, 47 N. Y. 261. As the court have not made their position clear, it is difficult to criticise the case, but the objections to it may be summed up by saying that it makes an innovation the extent and effect of which it is impossible to determine, and as a consequence renders the law of real property uncertain.[1]

LIBEL — CONFLICT OF LAWS. — In the case of *Machado* v. *Fontes* [1897] 2 Q. B. 231, the Court of Appeal has handed down a decision that is worthy of note. The court holds that if, while A and B are both in Brazil, A publish in regard to B an article which is not actionable according to Brazilian law, and which is not published in England, an action for libel may nevertheless be maintained by B against A in an English court. The cases cited, *Phillips* v. *Eyre*, L. R. 6 Q. B. 1, and *The Moxham*, 1 P. D. 107, support the decision only by *dicta*. Putting aside the question of precedent, however, it is hard to see how the case can be supported on principle. It is a recognized doctrine of private international law, that the courts of one country will, generally speaking, enforce obligations arising under the laws of another sovereign state. Wharton, Conflict of Laws, §§ 393 *et seq.* This case goes much further. There is no obligation incurred here to be enforced; for by the law governing the parties at the time of the act complained of no right was created in favor of the plaintiff against the defendant. To attempt to sustain the case on the ground that the act would be a libel by English law, would be to encroach upon one of the fundamental principles of international law, that of the territorial sovereignty of independent states. Wharton, *supra*, § 477; *Cope* v. *Doherty*, 4 Kay & J. 367.

PRECATORY TRUSTS. — It is doubtful if there is any more striking example of mistaken kindness than the exceeding diligence with which courts of equity were formerly wont to find declarations of trust when in simple fact none such existed. In wills, for example, particular words were seized on as imposing a legal obligation, although their ordinary meaning implied something quite the contrary. The intention of the testator was correctly and universally held to be the test; but in discovering this intention courts of equity seem not infrequently to have fallen into an obvious error of simple logic. The question, of course, is not whether the testator intends his property to go in the way he recommends, but whether he means the first taker to be legally bound to carry out what is undoubtedly his desire. It is not suggested that the courts deliberately ignored this distinction, but it is apparent that they frequently failed to keep it precisely and clearly before them. *Harding*

[1] It may be proper to say that Professor Gray, who was counsel at an application for a rehearing in this case, is in no way responsible for the appearance of this note in the REVIEW. — ED.

v. *Glyn*, 1 Atk. 469. In many cases this led to lamentable results. When, for example, after a devise or bequest, words indicative of hope or confidence were added, with an indefinite object, the trust, which the courts by the peculiar reasoning adopted were bound to find, failed entirely, and the first taker became constructive trustee for the heirs or next of kin. Thus the testator's evident intention was defeated by a rule, whose only excuse for existence was that it carried out such intention.

Happily there is to-day a reaction from this unfortunate kindness. A recent illustration of this is furnished by the case *In re Williams*, [1897] 2 Ch. 12. There the English Court of Appeal held that a devise by a testator absolutely to his wife, "in the fullest trust and confidence that she will carry out my wishes in the following particulars," did not impose a legal obligation on the wife, and that she took unrestricted. In the course of his opinion, A. L. Smith, L. J., makes an exceedingly pertinent remark which indicates what is the wholesome and reasonable rule to apply in this class of cases. He says, "I cannot understand, if he had intended an obligation by way of trust, why he did not say so."

TRADE SECRETS. — The development of the law in regard to the relations between confidential servants of an inventor and their master is well illustrated in the recent case of *Thum Co.* v. *Tloczynski*, 72 N. W. Rep. 140 (Mich.) The plaintiff is a manufacturer of a fly-paper by a secret though unpatented process. The defendant learned the secret while in the plaintiff's employ; and a decree was granted restraining him from communicating that secret to a third party. The result reached is not a new one; as long ago as 1851, it was held that an employee learning the recipe of a medicine from his master was not at liberty to make use of his knowledge either in imparting it to another or in starting a rival business of his own. *Morison* v. *Moat*, 9 Hare, 241. And more recent authority in America seems to have established complete equity jurisdiction over this class of cases. *Tabor* v. *Hoffman*, 118 N. Y. 31.

The grounds for the assumption of control by equity over these questions between inventor and employee are not satisfactorily determined. In cases where there is an express contract by the employee not to reveal the secrets of the employment the matter is simple. Often, however, as in the case at present under consideration, there is no such contract; and here, although the court uses language suggesting that there was a breach of confidence, it seems to feel the necessity of implying a contract. The theory of implied contracts, however, is overworked; and in the present case there seems to be a remedy which does not necessitate taking liberties with the facts. This remedy is the ordinary one for breach of trust. It does not depend on any contract, express or implied; for where circumstances create a fiduciary relation it makes no difference whether the trustee has contracted to carry out the trust or not. Many trusts are created in which the agreements between the parties would be held invalid for want of consideration if looked upon as common law contracts; yet the fiduciary is held bound as a trustee. The inquiry to be made in the present case is whether the confidential employee stands in the position of a trustee, so that in revealing his secret he is guilty of bad faith in the view of equity; and the answer must be that in all respects he does stand in such a position. The *res* which he holds in trust is his knowledge of his employer's secret; this knowledge is intrusted to